

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

SHEILA HELMERT, WILMA BROWN,
and LORI WEST, on behalf of themselves
and others similarly situated

PLAINTIFFS

v.

No. 4:08CV00342 JLH

BUTTERBALL, LLC

DEFENDANT

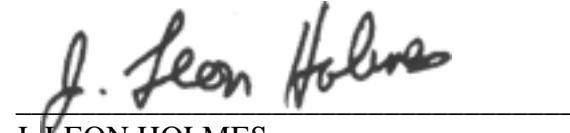
ORDER

The plaintiffs have filed a motion to compel production documents for *in camera* review for the Court to determine the scope of an alleged waiver of the attorney/client privilege by Butterball, LLC. Butterball has produced documents, as well as a privilege log describing documents that have been withheld on the ground of attorney/client privilege. The plaintiffs' motion seems to concede that the withheld documents are, in fact, confidential communications that would be protected by the attorney/client privilege unless the privilege has been waived. The plaintiffs contend that Butterball has waived the privilege by asserting a good faith defense and relying, in part, in support of that defense on memoranda prepared by attorneys. One of the attorneys is deceased. He was a partner in the law firm that currently represents Butterball in this litigation. Butterball has also produced opinion letters written by a different law firm for the benefit of a company that was subsequently acquired by Butterball. Butterball contends that these documents were not privileged, which is why they were produced, and that if any privilege had attached to them the privilege was waived by other parties who made them part of the public domain before Butterball produced them in this litigation.

After careful review, the Court has concluded that Butterball did not have an attorney/client relationship with the attorneys who prepared the documents when those documents were prepared, so there is no privilege with respect to those documents. One document was prepared for a trade

group of which Butterball is a member, but that document was made public before this litigation, so Butterball has not waived the privilege by producing it here. Butterball has not waived any privilege. The motion is therefore DENIED. Document #309.

IT IS SO ORDERED this 16th day of March, 2011.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE